

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

CHRISTIAN RANDOLPH,

Plaintiff

v.

**MARTIN J. CIRKIEL and CIRKIEL AND
ASSOCIATES,**

Defendants

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No. A-11-CA-406-SS

**MARTIN J. CIRKIEL AND CIRKIEL & ASSOCIATES' UNOPPOSED MOTION
FOR LEAVE TO FILE FIRST AMENDED ANSWER**

TO THE HONORABLE JUDGE SAM SPARKS, U.S.D.J.

NOW COME Defendants Martin J. Cirkiel and Cirkiel and Associates (hereinafter "Defendants" or "Cirkiel"), by and through their undersigned attorneys, and pursuant to F.R.C.P. 15(a) hereby file their Unopposed Motion for Leave to File First Amended Answer. In support thereof, Cirkiel states as follows:

1. Martin J. Cirkiel and Cirkiel and Associates are the only named defendants in the above-captioned action, which stems from Cirkiel's representation of Randolph in a lawsuit against the Texas Rehabilitation Commission. Plaintiff's claims are for professional negligence and breach of fiduciary duty.

2. This action was originally filed in Williamson County, Texas District Court on or about November 12, 2010. Cirkiel was served with the Original Petition on November 19, 2010. Cirkiel filed a timely state court Original Answer and General Denial on or about December 16, 2010.

3. Thereafter, following Plaintiff's filing of his Amended Petition, this matter was removed to this Court on or about May 17, 2011.

4. Cirkiel's First Amended Answer is filed more than twenty-one days after their Original Answer and General Denial. Thus, Cirkiel now seeks leave of this Court, pursuant to FRCP 15(a) to file their First Amended Answer which both complies with FRCP 8(b)(1) and asserts affirmative defenses to Plaintiff's claims.

5. This Court's July 19, 2011, Scheduling Order set a deadline of October 28, 2011, for the parties to amend their pleadings. Cirkiel's First Amended Answer, filed herewith, complies with that deadline.

6. Cirkiel has provided notice of this Motion to counsel of record for Plaintiff before filing. Counsel for Plaintiff has stated that he has no objection either to the filing of Cirkiel's First Amended Petition or this Motion for Leave.

WHEREFORE, PREMISES CONSIDERED, Defendants Martin J. Cirkiel and Cirkiel and Associates respectfully request that this Court grant them leave to file their First Amended Answer. Defendants additionally request such other and further relief, both at law and in equity, to which they may show themselves to be justly entitled.

Respectfully submitted,

THOMPSON, COE, COUSINS & IRONS,
L.L.P.

By: /s/ Michael B. Johnson
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ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

The undersigned certifies that on October 27, 2011, the above and foregoing document was transmitted electronically to the clerk of the Court using the ECF System for filing and was served upon all counsel of record listed below, via ECF, electronic mail and certified mail, return receipt requested.

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COUNSEL OF RECORD FOR PLAINTIFF

/s/ Michael B. Johnson